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BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of )  
MUR 6770 )  
David Hale for Congress )  
and David Hale as treasurer )  
David Hale )  
DISMISSAL AND  
CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6770 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.<sup>1</sup>

After reviewing the Complaint, the Response, and other available information, we recommend that the Commission find no reason to believe that David Hale violated 52 U.S.C.

<sup>1</sup> The EPS rating information is as follows:  
Response Filed: January 23, 2014.

Complaint Filed: December 31, 2013.

§ 30102(e)(1) and 11 C.F.R. § 101.1(a), by filing an untimely Statement of Candidacy.<sup>2</sup> We also recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that David Hale for Congress and David Hale in his official capacity as treasurer (collectively the "Committee") violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(b)(1), by publishing a website that failed to include an appropriate disclaimer.

## I. FACTS

Complainant John Lask alleges that Hale "credibly aggregated" at least \$5,000 in expenditures and contributions but did not file a timely Statement of Candidacy with the Commission. Compl. at 2. The Complaint does not cite to specific information regarding Hale's expenditures or contributions received, but provides general descriptions of his campaign activities. According to the Complaint, Hale traveled across the sixteenth district for campaign purposes and outside the district to file nominating petitions. *Id.* at 1. In addition, Hale allegedly made payments for printing costs, a post office box, various campaign materials, and the launch of a website. *Id.* at 1-2. The Complaint states that, after incurring these expenses, Hale wrote a November 30, 2013 blog post claiming he had at least \$3,000 remaining in cash on hand. *Id.* at 2. The Complaint further alleges that the Committee's publicly available website (<http://www.electdavidhale.com>) failed to include an adequate disclaimer. *Id.* at 2.

In his Response, Hale denies the allegation that he did not file a timely Statement of Candidacy, and refutes the allegation that he aggregated \$5,000 in expenditures or contributions at any point "during the timeframe covered by [the] complaint." Resp. at 1-3. Although Hale generally acknowledges the campaign expenses alleged in the Complaint, he

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<sup>2</sup> Hale was an unsuccessful candidate for the 2014 primary election for Illinois's sixteenth congressional district.

1 asserts that all transportation costs were covered by unreimbursed payments that were not  
2 reportable.<sup>3</sup> *Id.* at 2. Regarding the allegation concerning the Committee's website, Hale  
3 acknowledges that the website failed to include a disclaimer. *Id.* at 4. Hale explains that the  
4 missing disclaimer was "fixed within hours of receiving notification," on January 14, 2014,  
5 and that the website was designed before the Committee had been created.<sup>4</sup> *Id.*

## 6 II. DISCUSSION

### 7 A. Hale's Statement of Candidacy

8 An individual seeking nomination for election to federal office becomes a candidate  
9 under the Act and Commission regulations when, *inter alia*, he or she has aggregated  
10 contributions or expenditures in excess of \$5,000. 52 U.S.C. § 30101(2)(A); *see also*  
11 11 C.F.R. § 100.3(a)(1). Once a person crosses the \$5,000 candidacy threshold, he or she  
12 must file a Statement of Candidacy within 15 days designating a political committee to serve  
13 as the candidate's principal campaign committee. 52 U.S.C. § 30102(e)(1); *see also*  
14 11 C.F.R. § 101.1(a). Unreimbursed payments for transportation expenses incurred by any  
15 person on behalf of a candidate are not contributions to the extent that the aggregate value of  
16 the payments does not exceed \$1,000 with respect to a single election. 11 C.F.R.

<sup>3</sup> According to Hale, the Committee disclosed all reportable travel costs. Resp. at 2; *see also* David Hale: for Congress 2013 Year-End Report at 18 (Jan. 28, 2014) (in-kind contribution made by Hale for a hotel room). Hale acknowledges unreimbursed "mileage expenses" made in connection with his campaign, but asserts that they were non-reportable according to the Campaign Guide for Congressional Candidates and Committees. Resp. at 2.

<sup>4</sup> Hale may have received an unreported in-kind contribution for website construction in October 2013. Specifically, Hale states that website construction "was donated by a citizen not compensated by a 3<sup>rd</sup> party and, as such, is not reportable per FEC Candidate's Guide." Resp. at 2. Without further inquiry, the value of the potential in-kind contribution is unknown, but it is unlikely that it was large enough to affect when Hale became a candidate.

1 § 100.79(a)(1). Therefore, such unreimbursed transportation expenses are not treated as  
2 contributions towards the \$5,000 candidacy threshold.

3 Based on our review of the available information, including the Committee's filings  
4 with the Commission, Hale likely became a candidate sometime in January 2014, several  
5 weeks after he filed a Statement of Candidacy on December 12, 2013, the same day that  
6 David Hale for Congress filed a Statement of Organization.<sup>5</sup> The transportation costs  
7 generally described in the Complaint do not appear to be reportable contributions since there  
8 is no information to suggest that Hale, or anyone else acting on his behalf, made  
9 unreimbursed transportation payments in excess of \$1,000. For these reasons, the Office of  
10 General Counsel recommends that the Commission find no reason to believe that David Hale  
11 violated 52 U.S.C. § 30102(e)(1) by failing to file a Statement of Candidacy within 15 days of  
12 becoming a candidate.

13 **B. The Committee's Website**

14 The Act requires a disclaimer whenever a political committee, *inter alia*, makes a  
15 disbursement for the purpose of financing any communication through any type of general  
16 public political advertising; or whenever a person, *inter alia*, makes a disbursement for the  
17 purpose of financing communications expressly advocating the election or defeat of a clearly  
18 identified candidate, or solicits contributions through any type of general political advertising.  
19 52 U.S.C. § 30120(a)(1). Moreover, Commission regulations specify that a disclaimer is  
20 required for all Internet websites of political committees available to the general public.

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<sup>5</sup> In 2013, the Committee reported total contributions of \$4,822.76 and total expenditures of \$1,279.61. See David Hale for Congress 2013 Year-End Report at 2 (Jan. 28, 2014). At the earliest, Hale reached \$5,000 in total contributions on January 1, 2014, and at the latest on January 20, 2014, depending on when he received unitemized contributions. See David Hale for Congress Pre-Primary Report at 5-8 (Mar. 6, 2014).

1 11 C.F.R. § 110.11(a)(1). When a candidate, a candidate's authorized committee, or its  
2 agents pay for a communication requiring a disclaimer, the disclaimer must clearly state that  
3 the communication was paid for by the authorized committee. 52 U.S.C. § 30120(a)(1); *see*  
4 also 11 C.F.R. § 110.11(b)(1).

5 The Committee acknowledges that its website failed to include an adequate disclaimer  
6 until January 14, 2014. *Resp.* at 3-4. However, once the Committee received notification  
7 regarding the missing disclaimer, it took prompt remedial action. *See id.* at 4. Moreover,  
8 there was sufficient identifying information on the website so that the public would likely not  
9 have been misled.<sup>6</sup> Therefore, the Office of General Counsel recommends that the  
10 Commission exercise its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S.  
11 821 (1985), and dismiss the allegation that the Committee violated 52 U.S.C. § 30120(a)(1)  
12 by failing to include an adequate disclaimer on its website. Additionally, the Office  
13 recommends that the Commission approve the attached Factual and Legal Analysis and the  
14 appropriate letters, and close the file.

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<sup>6</sup> For example, there was a large image on the homepage with the words "David Hale for Congress," and the title of the website was "David Hale for Congress." In addition, the donation page stated that the recipient was "David Hale for Congress" and provided the individual contribution limits applicable to an authorized committee.

RECOMMENDATIONS

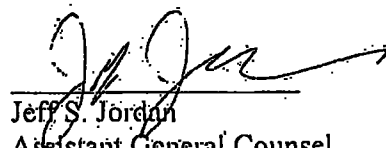
1. Find no reason to believe that David Hale violated 52 U.S.C. § 30102(c)(1) and 11 C.F.R. § 101.1(a);
2. Dismiss the allegation that David Hale for Congress and David Hale in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(b)(1), as a matter of prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985);
3. Approve the attached Factual and Legal Analyses and the appropriate letters; and
4. Close the file.

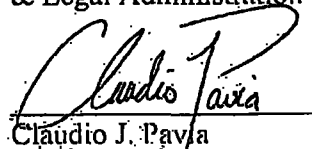
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